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**EXPANSION OF THE CITY OF FORT COLLINS SMOKING ORDINANCE:**  
Outdoor dining areas, bar patios, and public transit facilities

**ISSUE SUMMARY**

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At its November 5, 2013 meeting, the City Council of Fort Collins will have on the consent calendar a modification of the city’s smoking ordinance.<sup>1</sup> The proposal will prohibit smoking in outdoor dining areas, bar patios, and Transfort’s public transit facilities.<sup>2</sup> This proposal follows guidance to the City Neighborhood Services Department and Transfort from the Larimer County Department of Health and Environment, which advises that the expansion is guided by several factors:

- Complaints from the public about smoking in dining areas;
- Confusion by the public regarding smoking regulations in these areas;
- Growing public support for smoke-free outdoor areas;
- An increase in research and measurement of Environmental Tobacco Smoke (“ETS”) in public outdoor areas; and
- CDC recommendations for designating smoke-free outdoor areas to reduce tobacco use and improve health.

**BACKGROUND**

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From the August 13, 2013 City of Fort Collins Work Session Staff Memo:

“In 2003, Fort Collins was one of the first communities in Colorado to designate bars, restaurants, and workplaces as smoke-free. In 2006, the Fort Collins’ Smoking Ordinance was amended to conform to the Colorado Clean Indoor Air Act. ... In response to enforcement issues and citizen feedback regarding the current Smoking Ordinance, staff is interested in the possibility of strengthening/expanding the Ordinance. There has been some confusion in the community regarding whether there is already a ban on smoking in outdoor eating areas/patios. Additionally, in 2012, Larimer County Department of Health and Environment had staff and resources available to work collaboratively with Neighborhood Services and Transfort to research, survey, and develop potential options regarding smoking in outdoor public places. Larimer County received the Tobacco Education, Prevention, and Cessation Grant from the Colorado Department of Public Health and Environment in order to help support some of the work and research involved in this collaborative work. If Council chooses to move forward with any of the options to expand the smoking ordinance, the grant money will help fund signage to businesses for their patios as well as Transfort signage.”<sup>3</sup>

**What does the ordinance do?**

The expansion of the Fort Collins Smoking Ordinance would prohibit smoking in the following areas, along with enhanced education, public outreach, and enforcement efforts at these locations:

- Outdoor dining areas and bar patios
- 20 feet from outdoor dining areas and bar patios
- Public transit facilities, with exception of a designated smoking area that is 20 feet from building entrances, bus shelters and benches
- 20 feet from bus stop shelters and benches
- MAX platforms

### **Proponents**

The following are known proponents of an expanded ordinance:

- Larimer County Department of Health and Environment
- Tobacco Free Larimer County
- Team Fort Collins
- 68% of people in Fort Collins support (or strongly support) smoke-free outdoor dining areas and bar patios (according to an informal city survey of 1,358 respondents)<sup>4</sup>
- In interviews with Transfort riders by city staff, 60% indicated support for smoke-free policies at transit facilities

### **Opponents/potential opponents**

- Of businesses responding to a city survey, 16 indicated they allow smoking on outdoor dining areas or bar patios. Of those responding that they allow smoking in their outdoor areas, none supported an expansion of the smoking ordinance.
  - City staff determined there are 466 restaurants or bars in Fort Collins, 107 of which have outdoor seating areas. Staff contacted restaurants, but it isn't clear how many responded in total. Sixteen did respond that they allow smoking in outdoor areas.
- Some smokers may be in opposition to this proposal because it would restrict their ability to smoke outdoors at local businesses and transit facilities.

## **DISCUSSION**

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**Arguments in support of the expansion** of the Fort Collins Smoking Ordinance fall into two primary categories: 1) Popular Preference and 2) Public Health Research and Recommendations. Popular Preference arguments center on the views and desires of the public, as evidenced by surveys and interviews: complaints from the public about smoking in dining areas, confusion by the public on what is allowed, and public support for these policies. The Public Health arguments come from national research on Environmental Tobacco Smoke (secondhand smoke – “ETS”) and recommendations by public health agencies.

### **Popular Preference**

There is a growing local, national, and global trend of governments enlarging the scope of their non-smoking ordinances and regulations. According to the American Nonsmokers' Rights Foundation, as of October 1, 2013, at least 266 municipalities or counties (4 in Colorado) and the state of Iowa have prohibited smoking in outdoor dining areas and/or bar patios.<sup>5</sup> In addition, 313 municipalities or counties (6 in Colorado), the states of Iowa, New York, Wisconsin, and Guam and the U.S. Virgin Islands now prohibit smoking in outdoor public transit waiting areas.<sup>6</sup>

This trend of banning smoking in outdoor public areas follows a similar trend of increasing public approval and desire for such policies. A Gallup survey in 2013 indicated 55% of Americans support banning smoking in public places, up from around 30% in 2003.<sup>7</sup> Local surveys show a similar level of non-acceptance of smoking in public and/or support for smoke-free policies. In 2010, in the Health District of Northern Larimer County Community Health Survey, of those living in a Fort Collins zip code, 52.3% disagreed or strongly disagreed when asked, “Is it socially acceptable to smoke in public?”

A 2013 City of Fort Collins survey of 1,358 respondents found that 67.9% strongly or somewhat supported “smoke-free outdoor dining areas/bar patios.”<sup>8</sup> In addition, the city conducted interviews of 115 Transfort riders and reported that 60% supported smoke-free policies at public transit waiting areas and within 20 feet of bus shelters and benches.

In addition to general public support for the expansion of smoke-free policies, proponents indicate it is in response to citizen complaints about smoking in outdoor dining areas and general confusion about the current policies, such as which patios are smoke-free and which are not. According to estimates by city staff, of the 466 restaurants or bars in Fort Collins city limits, 107 have an outdoor seating area and when contacted, 16 responded that they permit smoking in those outdoor areas (it is unknown how many responded in total). Smoking is banned by business policy in some outdoor areas and smoking is banned in some due to their being within 20 feet of the business entrance.<sup>9</sup>

A uniform city smoke-free policy would likely reduce confusion by the public and reduce complaints by patrons. In addition, the policy would put Fort Collins in line with a growing national and local trend of enlarging public smoke-free policies to include some outdoor areas.

### **Public Health Research**

The health impacts of secondhand smoke are well researched and documented. Secondhand smoke or Environmental Tobacco Smoke (“ETS”) is a mix of particulate matter and thousands of compounds, many recognized as known or probable human carcinogens, and many toxic and irritant agents.<sup>10</sup> Largely based on longer-term ETS exposure studies, ETS has been linked to adverse health outcomes, including respiratory issues in adults and children, acute cardiovascular effects, and lung cancer. There is also a smaller but growing body of evidence linking short-term exposure to ETS to adverse respiratory effects and cardiac function.

However, the vast majority of studies of ETS have evaluated the effects of ETS in enclosed areas over a long period of time. Limiting the long-term exposure of workers in these enclosed settings was a primary impetus for the passage of many areas’ indoor smoke-free policies at restaurants and bars. Policies creating smoke-free indoor areas have been demonstrated to result in decreased ETS exposure and a corresponding decrease in risk of adverse health outcomes.<sup>11</sup> Comparatively, there is a very small amount of research looking at the health impacts of ETS in outdoor settings or the effects of policies limiting smoking in those areas. As noted by the Community Preventive Services Task Force, “Evidence remains sparse on the effects of public policies extending smoke-free protections to the public in outdoor settings such as parks and beaches.”<sup>12</sup>

One study of non-smokers in outdoor smoking environments compared to a smoke-free outdoor control environment did demonstrate the biological uptake of chemicals from the ETS.<sup>13</sup> This study showed that salivary cotinine (the primary metabolite of nicotine) and urinary NNAL (a metabolite of NNK, a biochemical link between ETS exposure and lung cancer risk) increased significantly following exposure to ETS outside of restaurants and bars. Though the biomarker increase was a modest one, the results were significant and indicate that non-smokers in outdoor smoking areas are exposed to measurable tobacco-specific carcinogenic compounds. Further, the amount of exposure was correlated with the number of smokers in the area and the structural characteristics of the smoking area.

A 2013 systematic review of studies looking at ETS exposure in outdoor and partially outdoor settings found only 18 studies that met the researchers’ criteria.<sup>14</sup> The review found that ETS levels were not negligible and potentially very high in these settings, but the levels are extremely variable due to wind, structural characteristics of the venue, proximity to smokers, number of active smokers, and non-ETS pollution. Compared to indoor areas where smoking takes place, outdoor venues have more transient ETS levels, which can quickly drop to background levels. Additionally, the report stated that indoor areas near outdoor smoking areas are prone to have higher ETS levels.

The review concluded that there is potential for high ETS exposures in outdoor areas, depending on a number of factors. More research is needed that might control for a number of factors, but ETS levels have a high potential to exceed healthy limits in certain circumstances.

There is a relatively small body of research on the potential health impacts of outdoor environmental tobacco smoke, but the research that does exist indicates that there is some potential for poorer air quality and for exposure to dangerous compounds. The studies indicate that the level of exposure is lower than in concentrated indoor areas and is impacted by wind, structural layout of the outdoor area, and other factors. Enclosed areas or even those adjacent to a wall have more concentration of ETS than open-air areas or those with more airflow and wind, which can quickly cause ETS levels to drop to background levels.

The U.S. Surgeon General and other public health organizations have concluded that there is no risk-free exposure level for secondhand smoke (ETS). There is some evidence that smoking in outdoor areas, especially those that are at least partially enclosed and not exposed to wind, can result in increased exposure to ETS and, thus, may present a risk to individuals in the area.

#### **Social norms and reducing initiation of tobacco use**

Studies have shown that tobacco initiation, particularly among youth and young adults, is influenced by perceived social attitudes and norms.<sup>15</sup> These attitudes and norms can, in turn, be influenced by the prevalence of smoking in popular areas and by the regulatory environment surround tobacco use. Prohibiting tobacco use in restaurant and bar patio areas would reduce the number of places where tobacco use might be seen as acceptable and normal.

#### **Public Health Recommendations**

The **Centers for Disease Control** (CDC) supports smoke-free policies that include outdoor areas:

“Ban smoking in public places—such as workplaces, schools, day care centers, hospitals, restaurants, hotels, and parks.”<sup>16</sup>

**The U.S. Surgeon General** has concluded that there is no safe level of ETS:

“Scientific evidence indicates that there is no risk-free level of exposure to secondhand smoke. Breathing even a little secondhand smoke can be harmful to your health.”<sup>17</sup>

The national **Community Preventive Services Task Force** recommends smoke-free policies to reduce secondhand smoke exposure and tobacco use on the basis of strong evidence of effectiveness. Included with these policies are those banning smoking in outdoor areas, but the Community Guide notes:

“Evidence remains sparse on the effects of public policies extending smoke-free protections to the public in outdoor settings such as parks and beaches.”<sup>18</sup>

The **World Health Organization** Guidelines on Protection from Exposure to Tobacco Smoke (those implementing Article 8 of the Framework Convention on Tobacco Control) recommend 100% smoke-free environments and encourage policies that prohibit smoking in even partially enclosed areas (“any space ... enclosed by one or more walls or sides...”).<sup>19</sup>

### **Arguments in Opposition to the Proposal**

The dangers of secondhand smoke in indoor locations are well-documented, but there is far less evidence of risk in outdoor areas. The evidence cited above in favor of banning smoking in outdoor areas shows that ETS exists in outdoor locations and individuals exposed to that outdoor ETS biologically uptake some of the chemicals in the smoke. However, research does not show that outdoor ETS poses a significant risk to others as it does in an enclosed space.

In one study of exposure as measured by nicotine biomarkers, individuals exposed to ETS in an outdoor bar area for three hours had cotinine levels ranging from 0.094 to 0.407 ng/mL.<sup>20</sup> Cotinine is primary proximate metabolite of nicotine and salivary cotinine can demonstrate nicotine exposure in non-smokers near ETS. According to a guide published by Salimetrics, a company producing cotinine measuring products, the average U.S. non-smoker has a salivary cotinine level of 0.116 ng/mL and those exposed to significant secondhand smoke are usually greater than 1.16 ng/mL and as high as 30 ng/mL.<sup>21</sup> The average adult smoker has a cotinine level of more than 100 ng/mL according to that guide. The outdoor ETS exposure study's post-exposure cotinine levels were significantly increased from pre-exposure levels, but still were well below what some regard as significant exposure to ETS.

An article by ethicist Ronald Bayer points to the potential harm in relying on such weak evidence of risk of harm of outdoor second hand smoke.<sup>22</sup> He argues that this weak evidence is relied on to mask the true aim of outdoor smoking bans: denormalization of smoking. Bayer concludes:

In making the case for banning cigarette smoking in parks and on beaches, public health officials, tobacco control advocates, and environmentalists have routinely appealed to the need to protect children, other nonsmokers, and wildlife from potentially injurious exposure. The specter of third-party harms has been invoked as the rationale for public health interventions. In doing so, despite relatively weak scientific evidence, advocates have sought to avoid the charge that outdoor smoking bans represent yet another case of overreaching by the "nanny state," of unjustified paternalism that lacks any respect for adults' fundamental autonomy.

Advancing claims that mask the underlying public health goal of denormalization is a perilous strategy. Public health must, in the end, rely on public trust. That trust is threatened when the case for interventions depends on weak evidence and involves degrees of dissimulation. Advocates for outdoor smoking bans should be candid about the limits of arguments based solely on third-party harms as they confront the lethal consequences of tobacco use.

### **FUTURE CONSIDERATIONS**

On November 5, 2013, the Fort Collins City Council will discuss and vote on the ordinance as discussed above: banning smoking in outdoor dining areas, bar patios, and at transit facilities. However, in the future, there will be further discussion of other proposals to reduce tobacco use and availability. At an August work session, city council members indicated some interest in further evaluating these proposals at a later date:

#### **Including electronic cigarettes in the smoking ordinance prohibitions**

Electronic cigarettes (e-cigarettes) are a relatively new product that allows a user to consume nicotine (or non-nicotine) vapor that can be flavored in various ways. These are promoted as a health alternative and, in some respects, as smoking-cessation devices. This new frontier in nicotine delivery systems is relatively unregulated and is growing at a dramatic rate. Many of the concerns with ETS are lessened (advertised as non-existent but this is little-studied) with e-cigarettes due to the chemicals being vaporized with electricity rather than the tobacco material being directly combusted.

Regulatory options being considered for e-cigarettes include prohibiting their use inside, largely due to public confusion and a lack of conclusive information on the secondhand effects. Additionally, some e-cigarettes are flavored, which may present an additional risk of youth-uptake. Finally, e-cigarettes can easily use a liquid containing other substances, such as marijuana-based e-cigarette liquids sold in Colorado medical marijuana dispensaries.

#### **Designating 100% smoke-free indoor hotels and motels**

Currently, 25% of hotel or motel rooms in a facility are allowed to be designated as smoking rooms. This proposal would make all hotel rooms in city limits non-smoking.<sup>23</sup>

#### **Eliminate sampling at tobacco retail stores**

Currently, tobacco retail stores may allow smoking within their establishments, to allow customers to sample the wares. This proposal would prohibit smoking within tobacco retail stores.

#### **Designate other outdoor areas as smoke-free**

Locally and nationally there is a push to designate more outdoor areas as smoke-free — areas other than restaurant and bar patios and transit facilities. Areas that are being considered for smoke-free designations in Fort Collins include public parks and trails, high-use pedestrian areas (Old Town), and at public events and festivals.

Wellington, Colorado recently joined in this trend when the city council voted to prohibit smoking in its public parks.<sup>24</sup> Nearly 900 municipalities and counties nationwide (and the state of Oklahoma) have opted to ban smoking in public parks.<sup>25</sup> Many more have banned smoking in zoos, on beaches, and at other public recreation areas, especially those frequented by children. As noted earlier, ETS exposure is generally far lower in open-air areas like parks, largely due to wind. Rather than specifically addressing ETS, these bans are generally promoted as lessening litter and reducing the visibility of smoking to children.

Fort Collins is also considering banning smoking in high-use pedestrian areas, such as in Old Town Fort Collins. It is unclear if this proposal would ban smoking in just Old Town Square or in the entire Old Town area. This proposal follows the recent introduction of a smoking ban on Boulder's Pearl Street Mall.<sup>26</sup> That ban began in January, with enforcement beginning in earnest in April. Foreseeable opposition to this proposal might be businesses in Old Town and residents just outside of the main commercial area (residential areas where smokers may relocate to).

The city is also considering banning smoking at some or all special events and festivals, such as New West Fest. These festivals are frequented by children and families and are frequently very crowded. With people in such close proximity, smoking presents an increased risk of ETS exposure to others, though this is somewhat mitigated by the open air and wind. The Tobacco Free Larimer County Coalition, at a September meeting, decided that a smoking ban at special events (at least some) would be a central focus and aim of the group in the future.

## ABOUT THIS SUMMARY

This summary was prepared by Health District of Northern Larimer County staff to assist the Health District Board of Directors in determining whether to take an official stand on various health-related issues. The Health District is a special district of the northern two-thirds of Larimer County, Colorado, supported by local property tax dollars and governed by a publicly elected five-member board. The Health District provides medical, mental health, dental, preventive and health planning services to the communities it serves. For more information about this summary or the Health District, please contact Dan Sapienza, Policy Coordinator, at (970) 224-5209, or e-mail at dsapienza@healthdistrict.org.

<sup>1</sup> City of Fort Collins City Council Agenda Planning Calendar. <http://www.fcgov.com/file-gateway/?id=15&ts=2013-10-03%2013:03:02>

<sup>2</sup> Fort Collins City Council Work Session, August 13, 2013.  
[http://citydocs.fcgov.com/?cmd=show\\_related&vid=72&dt=SUMMARY+AGENDA&rid=August+13%2C+2013](http://citydocs.fcgov.com/?cmd=show_related&vid=72&dt=SUMMARY+AGENDA&rid=August+13%2C+2013)

<sup>3</sup> Fort Collins City Council Work Session, August 13, 2013.  
[http://citydocs.fcgov.com/?cmd=show\\_related&vid=72&dt=SUMMARY+AGENDA&rid=August+13%2C+2013](http://citydocs.fcgov.com/?cmd=show_related&vid=72&dt=SUMMARY+AGENDA&rid=August+13%2C+2013)

<sup>4</sup> Fort Collins City Council Work Session, August 13, 2013.  
[http://citydocs.fcgov.com/?cmd=show\\_related&vid=72&dt=SUMMARY+AGENDA&rid=August+13%2C+2013](http://citydocs.fcgov.com/?cmd=show_related&vid=72&dt=SUMMARY+AGENDA&rid=August+13%2C+2013)

<sup>5</sup> <http://no-smoke.org/pdf/SmokefreeOutdoorDining.pdf>  
Dining area smoking bans in Colorado: Arvada, Avon, Eagle County, and Edgewater.

<sup>6</sup> <http://no-smoke.org/pdf/SmokefreeTransitStops.pdf>  
Transit facility smoking bans in Colorado: Boulder, Breckenridge, Durango, Lakewood, Silverthorne, and Summit County.

<sup>7</sup> <http://www.gallup.com/poll/163736/support-complete-smoking-ban-increases.aspx>

<sup>8</sup> Fort Collins City Council Work Session, August 13, 2013.  
[http://citydocs.fcgov.com/?cmd=show\\_related&vid=72&dt=SUMMARY+AGENDA&rid=August+13%2C+2013](http://citydocs.fcgov.com/?cmd=show_related&vid=72&dt=SUMMARY+AGENDA&rid=August+13%2C+2013)

<sup>9</sup> Fort Collins City Council Work Session, August 13, 2013.  
[http://citydocs.fcgov.com/?cmd=show\\_related&vid=72&dt=SUMMARY+AGENDA&rid=August+13%2C+2013](http://citydocs.fcgov.com/?cmd=show_related&vid=72&dt=SUMMARY+AGENDA&rid=August+13%2C+2013)

<sup>10</sup> Xisca Sureda, et al. Secondhand Tobacco Smoke Exposure in Open and Smei-Open Settings: A Systematic Review. *Environ Health Perspect* 121:766-773 (2013). Available at: <http://ehp.niehs.nih.gov/wp-content/uploads/121/7/ehp.1205806.pdf>

<sup>11</sup> Xisca Sureda, et al. Secondhand Tobacco Smoke Exposure in Open and Smei-Open Settings: A Systematic Review. *Environ Health Perspect* 121:766-773 (2013). Available at: <http://ehp.niehs.nih.gov/wp-content/uploads/121/7/ehp.1205806.pdf>

<sup>12</sup> <http://www.thecommunityguide.org/tobacco/RRsmokefreepolicies.html>

<sup>13</sup> Gideon St. Helen, et al. Exposure to Secondhand Smoke Outside of a Bar and a Restaurant and Tobacco Exposure Biomarkers in Nonsmokers. *Environ Health Perspect* 120:1010-1016 (2012). Available at: <http://ehp.niehs.nih.gov/wp-content/uploads/120/7/ehp.1104413.pdf>

<sup>14</sup> Xisca Sureda, et al. Secondhand Tobacco Smoke Exposure in Open and Smei-Open Settings: A Systematic Review. *Environ Health Perspect* 121:766-773 (2013). Available at: <http://ehp.niehs.nih.gov/wp-content/uploads/121/7/ehp.1205806.pdf>

<sup>15</sup> U.S. Surgeon General, Preventing tobacco Use Among Youth and Young Adults, 2012.  
<http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/>

<sup>16</sup> <http://www.cdc.gov/features/BackToSchool/>

<sup>17</sup> <http://www.surgeongeneral.gov/library/reports/secondhandsmoke/factsheet7.html>

<sup>18</sup> <http://www.thecommunityguide.org/tobacco/RRsmokefreepolicies.html>

<sup>19</sup> [http://www.who.int/fctc/cop/art%208%20guidelines\\_english.pdf](http://www.who.int/fctc/cop/art%208%20guidelines_english.pdf)

<sup>20</sup> Gideon St. Helen, et al. Exposure to Secondhand Smoke Outside of a Bar and a Restaurant and Tobacco Exposure Biomarkers in Nonsmokers. *Environ Health Perspect* 120:1010-1016 (2012). Available at: <http://ehp.niehs.nih.gov/wp-content/uploads/120/7/ehp.1104413.pdf>

<sup>21</sup> [http://www.salimetrics.com/documents/Spit\\_Tips\\_-\\_Cotinine\\_Guidelines.pdf](http://www.salimetrics.com/documents/Spit_Tips_-_Cotinine_Guidelines.pdf)

<sup>22</sup> Ronald Bayer and Kathleen E. Bachynski. Banning Smoking In Parks And On Beaches: Science, Policy, And The Politics Of Denormalization. *Health Affairs*, 32, no.7 (2013):1291-1298. doi: 10.1377/hlthaff.2012.1022

<sup>23</sup> Fort Collins City Council Work Session, August 13, 2013.  
[http://citydocs.fcgov.com/?cmd=show\\_related&vid=72&dt=SUMMARY+AGENDA&rid=August+13%2C+2013](http://citydocs.fcgov.com/?cmd=show_related&vid=72&dt=SUMMARY+AGENDA&rid=August+13%2C+2013)

<sup>24</sup> <http://www.coloradoan.com/article/20130608/NEWS01/306080020/Wellington-children-power-effort-ban-smoking-town-parks>

<sup>25</sup> <http://no-smoke.org/pdf/SmokefreeParks.pdf>

<sup>26</sup> [http://www.dailycamera.com/ci\\_22914384/boulder-begins-enforcement-pearl-street-mall-smoking-ban](http://www.dailycamera.com/ci_22914384/boulder-begins-enforcement-pearl-street-mall-smoking-ban)